Sheet Metal Workers International Association Local 550 (Dynamics Corporation of America, Anemostat Products Division) *and* Keith Rowlands. Case 4–CB–6424

September 20, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On August 10, 1992, Administrative Law Judge Michael O. Miller issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings as modified, and conclusions as modified, and to adopt the recommended Order as modified.

We agree with the judge that the Respondent violated Section 8(b)(1)(A) and (3) of the Act by trying and fining employee/members Keith Rowlands, Lee Ditchey, and Richard Gatto.[1] We also agree with the judge that the Respondent violated Section 8(b)(1)(A) by attempting to enforce its rule requiring the presence of a union representative during investigatory interviews in retaliation against the three members for their protected activities. For the reasons stated below, however, we disagree with the judge's finding that the Respondent's mere maintenance of the rule is unlawful.

The judge found that the Union's internal rule is unlawful, because it conflicts with the national labor policy favoring the free submission of disputes to grievance-arbitration machinery and with the statutory right of employees to refrain from union activity and the corollary right of employees to decline union assistance in disciplinary matters. We do not agree.

We find that the rule serves a legitimate union purpose of allowing the Union to participate in the interview of employees during the investigation of matters that might lead to discipline and to represent its members in the grievance-arbitration process. The specific purpose of the rule here, as stated by the Union, is to ensure the accuracy of statements made to the Employer at investigatory interviews. Cf. *Graphic Communications Local 388M (Georgia Pacific)*, 300 NLRB 1071, 1073 (1990) (union has a legitimate interest in disciplining a member for making perjured statements at arbitration hearing).

Contrary to the judge, we find that a rule attempting to secure the legitimate purpose described above does not interfere with the grievance-arbitration process. The rule requires the employee to request steward representation, and the Employer has consented to the presence of a steward if one is requested. Further, the rule does not prohibit an employee who is asked to make a statement during an interview from doing so.[2] Accordingly, there is no basis in this case for finding that the mere maintenance of the rule will impair the Employer's ability to secure information from an employee in preparation for a grievance.

Nor does the Union's rule interfere with an employee's right to refrain from engaging in union activities. Members who choose to decline to be represented by the Union at an investigatory interview are free to resign their membership and thereby avoid application of the rule. *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985). In this regard, we note that the General Counsel has failed to show, and the evidence fails to indicate, that the Union has sought to apply or enforce its rule against nonmembers, that there are any unlawful restrictions on the right of members to resign, or that the Union's internal rule is somehow binding on nonmembers.

Under *Scofield v. NLRB*, 394 U.S. 423, 430 (1969), a union is free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule. There being no argument by the General Counsel that the rule was not properly adopted or communicated to the Union's members, we find, in accordance with *Scofield* principles, that the Union's mere maintenance of the rule is not unlawful. The portion of the complaint alleging that the maintenance of the rule violated Section 8(b)(1)(A) of the Act is dismissed.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Sheet Metal Workers International Association Local 550, Throop, Pennsylvania, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Conducting disciplinary trials of, and imposing fines on, employee/members for giving information or evidence to the Employer respecting misconduct by other employee/members when discipline and resort to

[1] The judge found that the reason for the Union's trials and fines of the three members was to retaliate against them for giving information to their Employer, testifying at the arbitration hearing, and giving statements to the Board.

[2] In this connection, it must be remembered that we are addressing here the issue of whether it is unlawful for the Union to maintain the rule requiring the steward's presence, not whether the Union may retaliate against members for giving statements solicited by their Employer. The latter conduct may be found unlawful, as the judge properly found here.

the grievance-arbitration processes may be anticipated; for being called as witnesses and/or testifying at grievance-arbitration proceedings; or for giving testimony or providing information to the National Labor Relations Board; and attempting to enforce its rule requiring the presence of a steward or other union representative during investigatory interviews in retaliation against members for engaging in the above-described acts.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT conduct disciplinary trials of, or impose fines on, employee/members for giving information or evidence to the Employer respecting misconduct by other employee/members when discipline and resort to the grievance-arbitration procedures may be anticipated; for being called as witnesses and/or testifying at grievance-arbitration proceedings; or for giving testimony or providing information to the National Labor Relations Board; and WE WILL NOT attempt to enforce our rule requiring the presence of a steward or other union representative during investigatory interviews in retaliation against members for engaging in the above-described acts.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL NOT fail and refuse to bargain in good faith with the Employer by conducting disciplinary trials of, and imposing fines on, employee/members who are called as witnesses and/or testify at grievance-arbitration proceedings.

WE WILL rescind the fines assessed against Keith Rowlands, Lee Ditchey, and Richard Gatto.

WE WILL remove from our records all references to the trials of and fines against Keith Rowlands, Lee Ditchey, and Richard Gatto and notify them in writing that this has been done and that the discipline will not be used as the basis for any future actions against them.

WE WILL make Keith Rowlands, Lee Ditchey, and Richard Gatto whole, with interest, for any travel and other expenses they incurred and any loss of earnings and other benefits they may have suffered as a result of the trial board hearings conducted in Throop, Pennsylvania, on July 17, 1991.

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL 550

Carmen P. Cialino, Jr., Esq., for the General Counsel.
Edwin A. Abrahamsen, Esq. (Abrahamsen, Moran & Conaboy, P.C.), for the Respondent.

DECISION

STATEMENT OF THE CASE

MICHAEL O. MILLER, Administrative Law Judge. This case was heard in Scranton and Philadelphia, Pennsylania, on May 4, 5, and 25, 1992, based on an unfair labor practice charge filed on September 19, 1991, by Keith Rowlands, an individual, as amended on November 27, 1991, and a complaint issued by the Regional Director of Region 4 of the National Labor Relations Board (the Board) on November 27, 1991. The complaint alleges that Sheet Metal Workers Association Local 550 (Respondent or the Union) restrained and coerced certain employees of Dynamics Corporation of America, Anemostat Products Division, in violation of Section 8(b)(1)(A), and failed and refused to bargain in good faith with that employer in violation of Section 8(b)(3) and (d), of the National Labor Relations Act (the Act). Respondent's timely filed answer denies the commission of any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. THE EMPLOYER'S BUSINESS AND THE UNION'S LABOR ORGANIZATION STATUS AND PRELIMINARY CONCLUSIONS OF LAW

Dynamics Corporation of America (Anemostat Products Division) (the Employer), a New York corporation, is engaged in the manufacture, sale, and distribution of air distribution equipment and related products at its facility in Scranton, Pennsylvania. In the course and conduct of its business operations at that location, it annually sells and ships products valued in excess of $50,000 directly to customers located outside the State of Pennsylvania. The Respondent admits, and I find and conclude, that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I find and conclude that it is a labor organization within the meaning of Section 2(5) of the Act.

II. UNFAIR LABOR PRACTICES

A. *Collective-Bargaining Relationship*

The Union has a long standing collective-bargaining relationship with the Employer, representing its employees in the following unit:

> Production, maintenance, shipping and receiving employees, excepting office and plant clerical employees, supervisors and statutory exclusions as defined in the Labor-Management Relations Act of 1947, as amended.

Respondent admits, and I find and conclude, that the unit is appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

At all material times, Respondent and the Employer have been parties to a collective-bargaining agreement covering those employees. The current contract is effective from September 7, 1990, to August 15, 1993.

B. *Union Rule and the Underlying Dispute*

The Respondent has a rule or practice, unwritten but generally known to the employees, whereby employees who are called into the office in regard to disciplinary matters are supposed to be accompanied by a steward. The purpose of the rule, according to Local Union President Schadt, is to prevent employees from being misquoted; he denied that it was intended to suppress the expression of statements harmful to the Union. The Employer honors such requests.[1]

Apparently, a controversy exists among the Union, some of its members, and the Employer over the assignment of overtime. The Union objects to the amount of overtime worked by some employees and/or the fact that they perform work outside of their regular classifications when on overtime. As discussed hereinafter, the Employer has contended that the Union has utilized an overtime ban to exert economic pressure on it and that it restrained and coerced employees in its efforts to enforce such a ban.

C. *The Events Leading to Warren Schadt's Termination*

Keith Rowlands is a group leader; Lee Ditchey is a press brake operator. Both work on the second shift, from 3:30 p.m. to midnight. On November 2, 1990,[2] Rowlands and Ditchey were scheduled to work overtime, from 1:30 p.m. until the start of their shift. At about 1:15, they were relaxing before commencing work when Schadt, a first shift fork lift operator, spotted them. Schadt and Rowlands got into an argument over the overtime. It was observed (and to a lesser extent participated in) by Richard Gatto, a first shift group leader[3] (and frequent overtime worker). It was also observed by a supervisor, Dave Rollison.

Rollison sent both Rowlands and Schadt into the office. Following a brief meeting, Schadt was placed on an indefinite suspension and sent home. The chief steward was present during this meeting.

On November 5, Rowlands, Ditchey, and Gatto were each sent into the plant manager's office, individually. Present in the office, in addition to Plant Manager Foote, was the Employer's president, Robert Yarnchak. Foote questioned each of them about the November 2 incident, asking whether Schadt was bothering or harassing them with respect to their working overtime. Each acknowledged that Schadt was and each agreed to sign a statement indicating that they felt that Schadt was harassing them with respect to overtime and work assignments.[4]

None of these employees requested union representation when they went into Foote's office. Rowlands believed that, inasmuch as his dispute was with the Union and its president, any steward called to represent him would have had a conflict of interest. Ditchey told the chief steward that he had been called into the office, that he had been questioned about the November 2 incident and that he gave a statement to management about it.

On November 6, Schadt was notified that he was terminated, effective as of November 9.

D. *The Union's Charges Against Rowlands, Ditchey, and Gatto*

On November 11, Schadt filed internal union charges against Rowlands, Ditchey, and Gatto. He charged them under article 17, section 1(m) [Engaging in conduct which is detrimental to the best interests of this Association . . . or which will bring said union into disrepute] ''by making statements or by signing statements with management. Thereby causing me to be terminated from my job.''

On direct examination, Schadt claimed that he had brought the charges against them because they had gone into a meeting with management unaccompanied by a union steward, in violation of the Union's unwritten rule. Under cross examination, he acknowledged that he was motivated, at least in part, by the fact that their oral and written statements to management had caused him to be fired. Given the language of the charges he filed, the fact that his NLRB investigatory affidavit contains no reference to the breach of the unwritten rule, and the absence of any explanation of what purpose such a representative might have served in these meetings other than to stifle the employees' honest reporting of perceived misconduct, I must conclude that the reference to the unwritten rule was an afterthought.[5] At best, it was but a secondary and less significant reason for the charges.

The Union's constitution, article 18, provides the procedure trial board hearings. Those trials are to be conducted by

[1] In his brief, counsel for General Counsel concedes the existence of the rule.

[2] All dates hereinafter are between November 1990 and July 1991.

[3] Group leaders are unit employees. According to their job description, group leaders, under the direction of a supervisor, assign work and are responsible for its quality and completion, instruct personnel in operating practices, set up machines, and perform unit work. According to Rowlands, they are expected to report safety violations.

[4] The record fails to sustain General Counsel's contention that Rowlands and Ditchey were led to believe that they might be subject to discipline for their roles in the November 2 incident. Rowlands specifically denied that he was told ''that it was either you or Warren.'' The statement made to Ditchey, to the effect that the problems in the plant impacted on everybody's job, including his, was not a threat of potential discipline.

[5] Schadt testified, without contradiction, that when Rowlands called him on November 6, apparently to apologize for bringing about his discharge, he asked Rowlands whether Rowlands had asked for a union representative when he went into Foote's office. The intent of the rule, he claimed, was to provide a witness so that an employee could not subsequently be misquoted.

committees made up of union executive board members or specially elected union members. The date for such trials is supposed to be set by the presiding officer; section 2(d) provides that they shall be held promptly, but not less than 15 days after the mailing of the notice of the charges. The charges were initiated at the Union's December 9 monthly meeting.

According to the minutes of the Union's January 13 meeting, the Union's business manager, Tom Guida, recommended that, because of two arbitrations and other charges, the trials on these charges ''be rescheduled till after the results of the [Schadt] arbitration issues.'' Guida, who had little if any responsibility regarding such trials, testified that be requested this delay because of the press of other business and in order to avoid giving the Employer's attorney any advantage in the Schadt arbitration. At that point in time, Schadt's arbitration was being postponed at the Employer's request. The membership voted to postpone the hearings as Guida recommended. Schadt was unable to describe any advantage the Employer might gain from an earlier commencement of the trial board hearings.

E. *Unfair Labor Practice Charges*

On November 12, the Employer filed Section 8(b)(1) and (3) unfair labor practice charges against the Union. The charges alleged that the Union, particularly by Schadt's conduct, restrained and coerced employees in order to prevent them from performing overtime and other work. Rowlands, Ditchey, and Gatto were among the individuals interviewed by the Board agent in the course of the investigation.

The Employer's unfair labor practice charge was dismissed on February 21.

F. *Arbitration of Schadt's Discharge*

Schadt's discharge was arbitrated on April 22. Rowlands, Gatto, and Ditchey were subpoenaed by the Employer's attorney and testified as employer witnesses. No official stenographic record was made of that hearing. However, the arbitrator essentially summarized their testimony, as well as the testimony of several others who saw or heard the ''two to three minute heated exchange'' between Schadt and Rowlands.

Arbitrator Margaret Brogan issued her decision on June 5. The grievance was sustained, in part, with the arbitrator concluding that the employer had not been even-handed in its assignment of discipline. Schadt, she therefore found, had not been discharged for good and sufficient cause; the discharge was converted to a 30-day suspension and Schadt was reinstated with backpay from the conclusion of the suspension and without loss of seniority.

G. *The Trial Board Hearings*

Prior to Schadt's arbitration, Rowlands asked Guida what was holding up the trial board hearings. Guida said that everything was on hold until after the arbitration. Similarly, Ditchey questioned the then union financial secretary, Viercinski, about the scheduling of his hearing. Viercinski told him that they were going to wait and see what the three said at the arbitration hearing. Viercinski also referred to the fact that they had spoken to the Board agent with respect to the Employer's unfair labor practice charges.[6]

On June 27, 3 weeks after the arbitrator's award issued, the Union sent out its notices scheduling the trial board hearings. Those hearings were held on July 17. As in the arbitration hearing, there was no official record; however, minutes were made by the Union's recording secretary, George Belaus.

As Rowlands recalled his trial, he was questioned about why he had not taken a union representative in with him when he went into Foote's office on November 5. He replied that he did not think he needed one and noted the Union's conflict of interest. He was asked what he had told the Labor Board and what he had testified to before the arbitrator. Rowlands protested that he had been assured, in both forums, that what he testified to could not be used against him. Belaus told him that they did not care what the Board agent or the arbitrator had said and then read the arbitrator's summary of Rowland's testimony to the trial panel.

Belaus' minutes essentially corroborate Rowlands' testimony. In them, it is noted that Schadt testified that Rowlands should have gone to the Union, and not into Foote's office; that having gone into the office, he should not have said anything; and, that the statements Rowlands gave to management caused Schadt to be discharged. Those minutes also reflect that Rowlands was asked about what had transpired in his meeting with the Board agent.

Similarly, Ditchey recalled that, in his trial, he was asked about his testimony before the arbitrator and about what he had told the Board agent; he was also asked why he did not seek Union representation when the Board agent questioned him. His testimony before the arbitrator was read to the trial panel, over his objection.

The minutes of Ditchey's trial indicate that Schadt repeated the statement he had made regarding Rowlands, to the effect that he should not have gone into the office and, by doing so, had caused Schadt to be discharged. They further indicate that Ditchey was asked why he had not sought union representation when he was called into the office.

Gatto's trial followed the same pattern as those of Rowlands and Ditchey. Schadt's opening statement asserted that Gatto should have gone to the Union instead of management and that Gatto's statements to management had caused his discharge. He was questioned about the meeting with Foote and about his arbitration testimony.[7]

In each hearing, the employee was asked whether he had given a written statement to management. Each denied having done so.

The trial boards found Rowlands, Ditchey, and Gatto guilty of the charges against them. They then made recommendations to the membership with respect to the appropriate penalties. While the membership wanted to expel

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[6] Viercinski may have had no role in scheduling the trial board hearings but he would have been privy to discussions regarding those hearings. I credit Ditchey, noting that his testimony is consistent with the discussion at the January 13 Union meeting and with the interest expressed by the trial board members in what these employees had told both the Board agent and the arbitrator.

[7] Trial board member Mazza's claim that he did not ask Gatto about the arbitration is contradicted by Belaus' minutes and by his own affidavit. I find the Union's minutes to be the most reliable evidence of what transpired at Gatto's hearing.

them, the panels recommended, and the membership agreed, that they only be fined. The Union's costs incurred in the Schadt arbitration were determined to total $2700 and the fines assessed, $1500 against Rowlands, $1000 against Ditchey, and $200 against Gatto, were set to recoup those costs.

Union trustee White, who sat as a trial board member in Rowlands' trial, acknowledged that the fine assessed against Rowlands was the largest because his testimony was the most damaging to Schadt. The fine assessed against Gatto was the smallest, according to executive board member Mazza, because Gatto was only doing his job. As a group leader, Mazza stated, Gatto was expected to answer such questions.[8]

Efforts to appeal the findings and fines to the International Union were rejected on technical grounds. However, the Union has made no effort to date to enforce the fines.

H. *Analysis and Conclusions*

The Union contends that Rowlands, Ditchey, and Gatto were tried and fined because they breached its rule or policy regarding securing union representation before going into the office on a disciplinary matter. While their breaches of this policy was raised in their trials (and in Schadt's November 6 conversation with Rowlands), the evidence belies this contention. I am compelled to conclude, in agreement with the General Counsel, that they were fined because they cooperated with management in the investigation of alleged misconduct by Schadt, giving statements supporting management's discharge of Schadt both to management and before the arbitrator.

Thus, I note the language of Schadt's charges against each of them and his statements in support of those charges at their trials. Those charges and statements attacked what they said and the fact that they went to management rather than to the Union, not their failures to comply with the rule. I note also that when Guida recommended that the trials be postponed, he did not merely ask for a delay until after the arbitration. Rather, he asked that the trials be postponed until after the arbitrator's decision had issued. There is no rational explanation for seeking such a delay except to determine the effect of the witnesses' testimony upon the outcome and thereby apply undue pressure upon potential witnesses. Moreover, while Guida claimed that he asked for the delay because of the press of other business and his desire to avoid giving any edge to management in that hearing, he had little if any role in the trial board hearings and could offer no examples of how an earlier hearing might give the Employer such an edge. Similarly, I find it noteworthy that the trial board hearings were scheduled promptly after the arbitrator issued her decision.

Finally, I note the fines assessed against the three, equal to the Union's expenses in the arbitration and scaled in proportion to the effect the testimony each gave had upon the outcome. This is persuasive evidence that the Union's objection to their conduct was directed at what they said, not the absence of a steward when they said it.

Further, I find, in agreement with the General Counsel, that these employees were disciplined, in part, because they gave evidence to the NLRB in the investigation of an Employer-filed unfair labor practice charge. At the very least, the Union gave them the impression that their roles in that investigation were considered in judging whether they had violated the Union's constitution. In so finding, I note Viercinski's statement to Ditchey, the questions asked of Rowlands and Ditchey at their trials and the disregard of their rights not to disclose what they had told the Board agent or testified to in the arbitration. The charges may have been filed against them before the Employer's ULP charge was filed, but their cooperation in the investigation of the ULP charge was considered, or they were lead to believe that it was considered, when the trial boards reached their verdicts.

The law is unequivocally clear that a union may not fine members because they testify in an arbitration proceeding, because they cooperate with their employer in the investigation of misconduct by other employees (at least where a grievance has been or is likely to be filed), or because they give evidence to the NLRB with respect to unfair labor practice charges.[9]

Thus, the Board has long held that the Section 8(b)(1)(A) right of employees to refrain from assisting a labor organization includes the right to appear as a witness at an arbitration and give testimony deemed contrary to the Union's interests. That section is violated by subjecting employee-members to a disciplinary hearing as well as by the assigning of fines or other discipline. *Graphic Communications Local 388M (Georgia Pacific)*, 300 NLRB 1071 (1990). As the Board stated therein:

> It is axiomatic that grievance and arbitration procedures are a fundamental component of national labor policy. *Steelworkers v. Gulf Navigation*, 363 U.S. 574 (1960). It is essential to the integrity of these processes that witnesses feel free to testify before an arbitrator without fear of reprisal from either the employer or the union. Accordingly, Board law holds that a union violates Section 8(b)(1)(A) of the Act by disciplining members for appearing and testifying in arbitration proceedings in a manner contrary to the interests of other employees. *Oil Workers Local 7-103 (DAP, Inc.)*, 269 NLRB 129, 130 (1984); *Oil Workers Local 4-23 (Gulf Oil)*, 274 NLRB 475 (1985).

Moreover, given the strong statutory policy favoring the resolution of industrial disputes through a collectively bargained grievance and arbitration procedure, discipline imposed upon employees because they appeared and/or testified in such a proceeding is also deemed to violate the Union's

[8] The record contains no explanation of why this same logic was not applied to Rowlands, who was also a group leader.

[9] This latter principle is so self-evident that no further discussion is required. See *Automotive Salesmen's Assn. (Spitler-Denmer Inc.)*, 184 NLRB 608 (1970), and *Operating Engineers Local 138*, 148 NLRB 679 (1964). I deem it immaterial whether their roles in that investigation were actually considered in the trial boards' judgments or whether they were merely given that impression. In either case, they and any other employees who might be faced with a request to give evidence would be restrained and coerced into foregoing such cooperation. Respondent's counsel acknowledges that the Act prohibits union discipline motivated by an employee's testimony before either the Board or an arbitrator.

duty to bargain in good faith under Section 8(d) and 8(b)(3). As the Board stated in *Gulf Oil*, supra at 476:

> Protection of the arbitral process is a cornerstone in the Federal statutory scheme of providing industrial peace by the application and interpretation of the collective bargaining agreement. . . .
>
> To maintain the confidence of those subject to its processes, to assure its integrity and effectiveness as a means of dispute resolution, and to protect its status with respect to our deferral policies, arbitration must be shielded against measures which would tend to discourage any individual from appearing and testifying fully and truthfully. Union rules and discipline which are designed to discourage or prevent individuals from testifying or being called as witnesses in grievance arbitration hearings are inherently destructive of the contractual arbitration process and are therefore unlawful . . . [under] Section 8(d) and Section 8(b)(3) . . . .

Correlative to all of the foregoing is the right of employees to cooperate with management in the investigation of employee misconduct which might lead to discipline, at least where a grievance has been, or, as here, is likely to be filed.[10] Permitting interference with the employer's investigation of such misconduct or with its preparation for arbitration would render access to the grievance machinery nugatory. *DAP, Inc.*, supra.[11]

Finally, I turn to the Union's contention that it tried and fined these employees for violating its rule or policy against participating in investigatory interviews without a union presence. I have found that such a policy existed but that it was, at most, only marginally involved in the disciplinary action. Moreover, the General Counsel argues, and I agree, that the maintenance of such a rule is a further violation of Section 8(b)(1)(A).

Under *Scofield v. NLRB*, 394 U.S. 423, 430 (1969), unions are ''free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule.'' In this case, even aside from the question of whether the Union's unwritten rule or policy was ''properly adopted,'' the rule squarely conflicts with two well established elements of the national labor policy. The first is the policy favoring the free submission of industrial disputes to contractually adopted grievance arbitration machinery, as described above. As applied to Rowlands, Ditchey, and Gatto, Respondent's rule impairs such access.

The facts of this case indicate that the purpose of the Union's rule, at least as applied to Rowlands, Gatto, and Ditchey, was not to protect them from unwarranted discipline. They were not the subjects of the Employer's inquiries, Schadt was. It is clear from the context and from Schadt's opening statements before the trial boards that the Union expected that the three would have given different information, or none at all, had they been accompanied by their stewards when they went into Foote's office on November 5. Thus, the rule, like the fines, interferes with the Employer's right to secure employee testimony in preparation for grievance arbitration hearings. *Gulf Oil*, supra.

Second, but of no lesser importance, while employees have the right to the assistance of their union in disciplinary matters, that right is personal to them and does not reside in the union. They also have the basic statutory right to decline such union assistance or participation. The Union's rule impinges upon that clear Congressional policy. It interferes with the exercise of the right to refrain from union activities in violation of Section 8(b)(1)(A). *NLRB v. J. Weingarten*, 420 U.S. 251 (1975); *Appalachian Power Co.*, 253 NLRB 931 (1980). I cannot find, as suggested by Respondent, that the Union's rule is a logical and appropriate extension of the *Weingarten* rule permitting employees to have union representation, on their request, at investigatory interviews.

CONCLUSIONS OF LAW

1. By conducting disciplinary trials of, and by imposing fines upon, employee/members who: give information or evidence to their employer respecting misconduct by other employee/members when discipline and resort to the grievance procedure may be anticipated; are called as witnesses and/or testify at grievance arbitration proceedings; or who give testimony or provide information to the National Labor Relations Board; and by maintaining and enforcing a rule or practice which impedes employee/members from cooperating with the employer in grievance arbitration proceedings or which precludes them from exercising their right to refrain from union activity by requiring the presence of a steward or other union representative whenever an employee is called into the office in regard to a disciplinary matter, the Union has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

2. By conducting disciplinary trials of, and by imposing fines upon, employee/members who are called as witnesses and/or testify at grievance arbitration proceedings, the Union has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

In order to place the three employees in the position they would have been absent Respondent's unfair labor practices, I shall recommend that Respondent be ordered to make them whole for all legal and other expenses incurred, including any wages lost and travel expenses incurred by attending the

[10] Inasmuch as the subject of the Employer's questioning was conduct of a high ranking union officer, and particularly in view of the fact that that officer had already been suspended and was going to be discharged, the Employer and the three employees could reasonably anticipate, here, as in *Dap, Inc.*, supra, that a grievance would be filed and, absent settlement, would proceed to arbitration.

[11] As the record fails to sustain the contention that Rowlands and Gatto were obligated, as group leaders, to report employee misconduct, I reject the argument that the fines were violative for the additional reason that they impeded the performance of their job functions. Compare *Carpenters (Hopeman Bros.)*, 272 NLRB 584 (1984), where the duty to report violations of the employer's rules of conduct was explicit. I need not reach the issue of whether this contention was pleaded or fully litigated.

Union's trial board hearings in Throop, Pennsylvania, on July 17, 1991. *Georgia Pacific*, supra; *Laborers Northern California Council (Baker Co.)*, 275 NLRB 278 (1985). Interest thereon shall be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). While Respondent contends that the General Counsel has failed to prove such expenses, I find that the extent to which such expenses were incurred is appropriately a matter for the compliance phase of this proceeding.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Sheet Metal Workers International Association Local 550, Throop, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Conducting disciplinary trials of, and imposing fines on, employee/members who: give information or evidence to the Employer respecting misconduct by other employee/-members when discipline and resort to the grievance arbitration processes may be anticipated; are called as witnesses and/or testify at grievance arbitration proceedings; or who give testimony or provide information to the National Labor Relations Board; and maintaining and enforcing a rule or practice which impedes employee/members from cooperating with the Employer in the investigation of employee misconduct or which precludes them from exercising their right to refrain from union activity by requiring the presence of a steward or other union representative whenever an employee is called into the office in regard to a disciplinary matter.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(c) Failing and refusing to bargain in good faith with the Employer by conducting disciplinary trials of, and imposing fines upon, employee/members who are called as witnesses and/or testify at grievance arbitration proceedings.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the fines assessed against Keith Rowlands, Lee Ditchey, and Richard Gatto.

(b) Expunge from its records all references to the trials of and fines against Keith Rowlands, Lee Ditchey, and Richard Gatto and notify them in writing that this has been done and that the discipline will not be used as the basis for any future actions against them.

(c) Make Keith Rowlands, Lee Ditchey, and Richard Gatto whole, with interest, for any loss of earnings and other benefits they may have suffered as a result of the Union's unfair labor practices, and for any travel or other expenses they may have incurred as a result of the trial board hearings conducted in Throop, Pennsylvania on July 17, 1991, with interest.

(d) Post at its office and meeting hall in Throop, Pennsylvania, copies of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employee and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Sign and return to the Regional Director sufficient copies of the notice for posting by Dynamics Corporation of America, Anemostat Products Division, if willing, at all places where notices to employees are customarily posted.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[12] If no exceptions are filed as provided by Sec. l02.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. l02.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''